

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**JENNIFER PIGGOTT and  
SLADE PIGGOTT,**

**Plaintiffs,**

**v.**

**GRAY CONSTRUCTION, INC.,**

**Defendant/Third-Party Plaintiff,**

**v.**

**COOPER’S STEEL FABRICATORS,  
INC., ALL-SOUTH  
SUBCONTRACTORS, FREELAND-  
HARRIS CONSULTING ENGINEERS  
OF KENTUCKY, INC., FREELAND  
HARRIS CONSULTING ENGINEERS  
OF GEORGIA, INC., THE HARDY  
CORPORATION, LATTA PLUMBING  
& CONSTRUCTION CO., INC.,  
HWASHIN AMERICAN  
CORPORATION and FIRESTONE  
BUILDING PRODUCTS  
COMPANY, LLC,**

**Third-Party Defendants.**

**Case No.: CV-06-1158-F**

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**ANSWER TO GRAY’S FIRST AMENDED THIRD-PARTY COMPLAINT**

COMES NOW Defendant Latta Plumbing & Construction Co., Inc. (“Latta Plumbing”), a Third-Party Defendant in the above-captioned matter, and answers the allegations contained in the First Amended Third-Party Complaint of Gray Construction, Inc. (“Gray”) by denying all allegations contained in the First Amended Third-Party Complaint. As to each specific allegation in Gray’s First Amended Third-Party Complaint, Latta Plumbing responds as follows:

## **PARTIES**

1. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 1 of the First Amended Third Party Complaint.

2. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 2 of the First Amended Third Party Complaint.

3. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 3 of the First Amended Third Party Complaint.

4. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 4 of the First Amended Third Party Complaint.

5. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 5 of the First Amended Third Party Complaint.

6. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 6 of the First Amended Third Party Complaint.

7. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 7 of the First Amended Third Party Complaint.

8. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 8 of the First Amended Third Party Complaint.

9. Latta Plumbing admits that it is an Alabama corporation with its principal place of business in Gardendale, Alabama. Latta Plumbing further admits that it was hired by The Hardy Corporation. The remaining allegations in paragraph 9 of the First Amended Third Party Complaint are denied.

10. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 10 of the First Amended Third Party Complaint.

11. This paragraph contains no allegations against Latta Plumbing to which a response is required. To the extent a response is required, denied.

#### **JURISDICTION AND VENUE**

12. Denied.

13. Denied.

14. Denied.

#### **STATEMENT OF THE FACTS**

15. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 15 of the First Amended Third Party Complaint.

16. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 16 of the First Amended Third Party Complaint.

17. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 17 of the First Amended Third Party Complaint. To the extent a response is required, denied.

18. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 18 of the First Amended Third Party Complaint. To the extent a response is required, denied.

19. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 19 of the First Amended Third Party Complaint. To the extent a response is required, denied.

20. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 20 of the First Amended Third Party Complaint. To the extent a response is required, denied.

21. Denied.

22. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 22 of the First Amended Third Party Complaint. To the extent a response is required, denied.

23. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 23 of the First Amended Third Party Complaint. To the extent a response is required, denied.

24. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 24 of the First Amended Third Party Complaint. To the extent a response is required, denied.

25. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 25 of the First Amended Third Party Complaint. To the extent a response is required, denied.

26. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 26 of the First Amended Third Party Complaint. To the extent a response is required, denied.

27. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 27 of the First Amended Third Party Complaint. To the extent a response is required, denied.

28. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 28 of the First Amended Third Party Complaint. To the extent a response is required, denied.

29. Latta Plumbing lacks knowledge or information sufficient to formulate a response to the allegations in paragraph 29 of the First Amended Third Party Complaint. To the extent a response is required, denied.

30. Latta Plumbing admits that the Plaintiffs' Complaint avers in substance the allegations of paragraph 30 of the First Amended Third Party Complaint. Latta Plumbing lacks knowledge or information sufficient to formulate a response to those allegations. To the extent a response is required, denied. Latta Plumbing further denies that it is responsible for the alleged injuries and damages claimed by the Plaintiffs.

31. Latta Plumbing admits that the Plaintiffs' Complaint avers in substance the allegations of paragraph 31 of the First Amended Third Party Complaint. Latta Plumbing lacks knowledge or information sufficient to formulate a response to those allegations. To the extent a response is required, denied. Latta Plumbing further denies that it is responsible for the alleged injuries and damages claimed by the Plaintiffs.

#### **COUNT ONE FOR CONTRACTUAL INDEMNITY AS TO HWASHIN**

32. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

33. The claims in paragraph 33 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 33 apply to Latta Plumbing, denied.

34. The claims in paragraph 34 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 34 apply to Latta Plumbing, denied.

35. The claims in paragraph 35 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 35 apply to Latta Plumbing, denied.

36. The claims in paragraph 36 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 36 apply to Latta Plumbing, denied.

**COUNT TWO FOR CONTRACTUAL INDEMNITY AS TO FREELAND HARRIS**

37. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

38. The claims in paragraph 38 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 38 apply to Latta Plumbing, denied.

39. The claims in paragraph 39 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 39 apply to Latta Plumbing, denied.

40. The claims in paragraph 40 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 40 apply to Latta Plumbing, denied.

41. The claims in paragraph 41 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 41 apply to Latta Plumbing, denied.

**COUNT THREE FOR CONTRACTUAL INDEMNITY AS TO HARDY**

42. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated therein.

43. The claims in paragraph 43 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 43 apply to Latta Plumbing, denied.

44. The claims in paragraph 44 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 44 apply to Latta Plumbing, denied.

45. The claims in paragraph 45 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 45 apply to Latta Plumbing, denied.

46. The claims in Paragraph 46 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 46 apply to Latta Plumbing, denied.

**COUNT FOUR FOR CONTRACTUAL INDEMNITY AS TO COOPER'S STEEL**

47. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

48. The claims in paragraph 48 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 48 apply to Latta Plumbing, denied.

49. The claims in paragraph 49 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 49 apply to Latta Plumbing, denied.

50. The claims in paragraph 50 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 50 apply to Latta Plumbing, denied.

51. The claims in paragraph 51 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 51 apply to Latta Plumbing, denied.

**COUNT FIVE FOR CONTRACTUAL INDEMNITY AS TO ALL-SOUTH**

52. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

53. The claims in paragraph 53 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 53 apply to Latta Plumbing, denied.

54. The claims in paragraph 54 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 54 apply to Latta Plumbing, denied.

55. The claims in paragraph 55 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 55 apply to Latta Plumbing, denied.

56. The claims in paragraph 56 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 56 apply to Latta Plumbing, denied.

**COUNT SIX FOR COMMON LAW INDEMNITY AS TO HWASHIN**

57. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

58. The claims in paragraph 58 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 58 apply to Latta Plumbing, denied.

59. The claims in paragraph 59 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 59 apply to Latta Plumbing, denied.

60. The claims in paragraph 60 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 60 apply to Latta Plumbing, denied.

61. The claims in paragraph 61 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 61 apply to Latta Plumbing, denied.

**COUNT SEVEN FOR COMMON LAW INDEMNITY AS TO LATTA**

62. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied. By way of further answer, Latta Plumbing denies all prayers for relief and denies that Gray is entitled to any of the relief requested in the First Amended Third Party Complaint against Latta Plumbing.



**COUNT EIGHT FOR COMMON LAW INDEMNITY AS TO FIRESTONE**

68. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

69. The claims in paragraph 69 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 69 apply to Latta Plumbing, denied.

70. The claims in paragraph 70 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 70 apply to Latta Plumbing, denied.

71. The claims in paragraph 71 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 71 apply to Latta Plumbing, denied.

72. The claims in paragraph 72 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 72 apply to Latta Plumbing, denied.

73. The claims in paragraph 73 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 73 apply to Latta Plumbing, denied.

**COUNT NINE FOR BREACH OF CONTRACT AS TO FREELAND HARRIS**

74. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

75. The claims in paragraph 75 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 75 apply to Latta Plumbing, denied.

76. The claims in paragraph 76 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 76 apply to Latta Plumbing, denied.

77. The claims in paragraph 77 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 77 apply to Latta Plumbing, denied.

78. The claims in paragraph 78 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 78 apply to Latta Plumbing, denied.

79. The claims in paragraph 79 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 79 apply to Latta Plumbing, denied.

**COUNT TEN FOR BREACH OF CONTRACT AS TO COOPER'S STEEL**

80. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

81. The claims in paragraph 81 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 81 apply to Latta Plumbing, denied.

82. The claims in paragraph 82 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 82 apply to Latta Plumbing, denied.

83. The claims in paragraph 83 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 83 apply to Latta Plumbing, denied.

84. The claims in paragraph 84 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 84 apply to Latta Plumbing, denied.

85. The claims in paragraph 84 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 84 apply to Latta Plumbing, denied.

**COUNT ELEVEN FOR BREACH OF CONTRACT AS TO HARDY**

86. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

87. The claims in paragraph 87 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 87 apply to Latta Plumbing, denied.

88. The claims in paragraph 88 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 88 apply to Latta Plumbing, denied.

89. The claims in paragraph 89 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 89 apply to Latta Plumbing, denied.

90. The claims in paragraph 90 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 90 apply to Latta Plumbing, denied.

91. The claims in paragraph 91 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 91 apply to Latta Plumbing, denied.

**COUNT TWELVE FOR BREACH OF CONTRACT AS TO ALL-SOUTH**

92. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

93. The claims in paragraph 93 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 93 apply to Latta Plumbing, denied.

94. The claims in paragraph 94 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 94 apply to Latta Plumbing, denied.

95. The claims in paragraph 95 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 95 apply to Latta Plumbing, denied.

96. The claims in paragraph 96 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 96 apply to Latta Plumbing, denied.

97. The claims in paragraph 97 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 97 apply to Latta Plumbing, denied.

**COUNT THIRTEEN FOR THIRD-PARTY BENEFICIARY BREACH OF CONTRACT**

**AS TO LATTA**

98. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

99. Denied.

100. Denied.

101. Denied.

102. Denied. By way of further answer, Latta Plumbing denies all prayers for relief in the First Amended Third Party Complaint, and denies that Gray is entitled to any of the relief requested from Latta Plumbing in the First Amended Third Party Complaint.

#### **COUNT FOURTEEN FOR BREACH OF EXPRESS WARRANTY AS TO HARDY**

103. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

104. The claims in paragraph 104 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 104 apply to Latta Plumbing, denied.

105. The claims in paragraph 105 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 105 apply to Latta Plumbing, denied.

106. The claims in paragraph 106 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 106 apply to Latta Plumbing, denied.

#### **COUNT FIFTEEN FOR BREACH OF EXPRESS WARRANTY**

##### **AS TO COOPER'S STEEL**

107. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

108. The claims in paragraph 108 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 108 apply to Latta Plumbing, denied.

109. The claims in paragraph 109 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 109 apply to Latta Plumbing, denied.

110. The claims in paragraph 110 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 110 apply to Latta Plumbing, denied.

**COUNT SIXTEEN FOR BREACH OF EXPRESS WARRANTY AS TO ALL-SOUTH**

111. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

112. The claims in paragraph 112 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 112 apply to Latta Plumbing, denied.

113. The claims in paragraph 113 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 113 apply to Latta Plumbing, denied.

114. The claims in paragraph 114 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 114 apply to Latta Plumbing, denied.

**COUNT SEVENTEEN FOR NEGLIGENCE AS TO FREELAND HARRIS**

115. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

116. The claims in paragraph 116 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 116 apply to Latat Plumbing, denied.

117. The claims in paragraph 117 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 117 apply to Latta Plumbing, denied.

118. The claims in paragraph 118 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 118 apply to Latta Plumbing, denied.

**COUNT EIGHTEEN FOR NEGLIGENCE AS TO HARDY**

119. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

120. The claims in paragraph 120 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 120 apply to Latta Plumbing, denied.

121. The claims in paragraph 121 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 121 apply to Latta Plumbing, denied.

122. The claims in paragraph 122 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 122 apply to Latta Plumbing, denied.

**COUNT NINETEEN FOR NEGLIGENCE AS TO COOPER'S STEEL**

123. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

124. The claims in paragraph 124 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 124 apply Latta Plumbing, denied.

125. The claims in paragraph 125 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 125 apply to Latta Plumbing, denied.

126. The claims in paragraph 126 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 126 apply to Latta Plumbing, denied.

**COUNT TWENTY FOR NEGLIGENCE AS TO ALL-SOUTH**

127. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

128. The claims in paragraph 128 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 128 apply to Latta Plumbing, denied.

129. The claims in paragraph 129 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 129 apply to Latta Plumbing, denied.

130. The claims in paragraph 130 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 130 apply to Latta Plumbing, denied.

**COUNT TWENTY-ONE FOR NEGLIGENCE AS TO LATTA**

131. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

132. Denied.

133. Denied.

134. Denied. By way of further answer, Latta Plumbing denies all prayers for relief in the First Amended Third Party Complaint, and denies that Gray is entitled to any of the relief requested from Latta Plumbing in the First Amended Third Party Complaint.

**COUNT TWENTY-TWO FOR NEGLIGENCE AS TO FIRESTONE**

135. Latta Plumbing adopts and incorporates by reference its previous responses as if fully stated herein.

136. The claims in paragraph 136 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 136 apply to Latta Plumbing, denied.

137. The claims in paragraph 137 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 137 apply to Latta Plumbing, denied.

138. The claims in paragraph 138 do not appear to be directed against Latta Plumbing. To the extent the allegations of paragraph 138 apply to Latta Plumbing, denied.

**AFFIRMATIVE DEFENSES**

Latta Plumbing asserts the following affirmative defenses without assuming the burden

of proof on these defenses that would otherwise rest with Third-Party Plaintiff.

1. The First Amended Third Party Complaint filed in this action fails to state a claim against Latta Plumbing upon which relief may be granted.
2. Latta Plumbing pleads the general issue.
3. Latta Plumbing pleads the defense of superseding cause.
4. Latta Plumbing pleads the defense of intervening cause.
5. Third-Party Plaintiff failed to act reasonably.
6. Third-Party Plaintiff failed to mitigate its damages.
7. Third-Party Plaintiff caused its own damages.
8. Latta Plumbing denies that its action or inaction caused or contributed to cause the Plaintiffs' injuries or Third-Party Plaintiff's injuries in any manner.
9. Latta Plumbing pleads the defense of contributory negligence.
10. Latta Plumbing pleads the defense of assumption of the risk.
11. Third-Party Plaintiff's claims are or may be, barred, in whole or in part, by estoppel, waiver, and/or laches.
12. Latta Plumbing pleads the affirmative defense of an Act of God.
13. Third-Party Plaintiff's claims are, or may be, barred by the applicable statute of limitations and/or the statute of repose.
14. Latta Plumbing avers that the work performed by it was completed and accepted by Gray and further avers that it is not liable to Gray for any damages or for indemnity.
15. Latta Plumbing says that Third-Party Plaintiff has no contractual or legal basis to seek indemnity from this Defendant.



16. Latta Plumbing says that the First Amended Third-Party Complaint seeks contribution from alleged joint tortfeasors which is impermissible under Alabama law.

17. Latta Plumbing says there was no legal duty owed by it to the Third-Party Plaintiff, the breach of which would give rise to a cause of action by Third-Party Plaintiff against this Defendant.

18. Third-Party Plaintiff's claims are, or may be, barred, in whole or in part, because Third-Party Plaintiff was an active tortfeasor.

19. Latta Plumbing pleads the defense of accord and satisfaction.

20. Latta Plumbing pleads the affirmative defenses of set off, payment, and release.

21. Third-Party Plaintiff's claims for recovery, including, but not limited to, any claim for damages, penalties, and punitive damages are in contravention of Latta Plumbing's rights under each of the following Constitutional provisions:

- a. Article 1, Section 8 of the United States Constitution, which prohibits impermissible burdens on interstate commerce;
- b. the excessive fines clause of the Eighth Amendment to the United States Constitution;
- c. the due process clause of the Fourteenth Amendment to the United States Constitution;
- d. the excessive fines clause of Article 1, Section 15 of the Constitution of Alabama;
- e. the due process clause of Article 1, Section 6 of the Constitution of Alabama;
  - (i) the double jeopardy clause of the Fifth Amendment of the United States Constitution; and

(ii) the double jeopardy of Article 1, Section 9 of the Constitution of Alabama.

22. Latta Plumbing asserts the affirmative defense of statute of frauds.

23. Latta Plumbing asserts that the acts complained of in the Plaintiffs' Complaint and in the First Amended Third Party Complaint arose as a result of the acts or omissions of others over whom Latta Plumbing had no control, or which occurred after Latta Plumbing had fully performed under its contract, and therefore, Latta Plumbing is not liable for any of the damages claimed in the First Amended Third Party Complaint.

24. Latta Plumbing asserts the affirmative defense of failure of consideration.

25. Latta Plumbing asserts the defenses of lack of standing and failure to join the real party in interest.

26. Latta Plumbing asserts that the Third Party Plaintiff's claims for breach of contract and negligence are improper and should be dismissed because they cannot support a claim under Rule 14, Fed.R.Civ.P.

27. Latta Plumbing asserts that the Third Party Plaintiff's claim for common law indemnity is due to be dismissed because it is improper under Alabama law.

28. Latta Plumbing pleads the affirmative defenses of modification, novation and ratification.

29. Latta Plumbing asserts that the claims are or may be subject to binding arbitration.

30. Latta Plumbing asserts the defense of unclean hands.

31. Gray is neither a party to, nor an intended beneficiary of, any contract relating to the construction project at issue to which Latta Plumbing was a party.

32. Latta Plumbing asserts the defense of improper jurisdiction.

33. Latta Plumbing reserves the right to amend its Answer to Gray's First Amended Third Party Complaint to include additional defenses as discovery progresses.

Respectfully submitted,

/s/ Felicia A. Long

Thomas T. Gallion, III (ASB-5295-L74T)

Constance C. Walker (ASB-5510-L66C)

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of October 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send notification of such filing to the following parties or counsel:

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/s/ Felicia A. Long

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